UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

POST COMMERCIAL REAL ESTATE, LLC,
d/b/a POST BROTHERS PRESIDENTIAL CITY
AND RITTENHOUSE HILL APARTMENTS

and **Case Nos. 4-CA-105691**
4-CA-105855

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL UNION #98

Donna Brown, Esq., Counsel for the General Counsel.
Stephen Holroyd, Esq., Jennings Sigmond, PC, Counsel for the Charging Party.
Charles Ercole, Esq., and *Carianne Torrissi, Esq., Klehr, Harrison, Harvey, Branzburg, LLC,* Counsel for the Respondent.

DECISION

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me in Philadelphia, Pennsylvania on December 11, 2013. The Consolidated Complaint, which issued on August 23, 2013[1] was based upon unfair labor practice charges and an amended charge that were filed on May 22, May 23, and July 30 by International Brotherhood of Electrical Workers, Local Union # 98, herein called the Union. The Complaint alleges that starting in late April, the Union placed lawn signs on public property adjacent to Post Commercial Real Estate, LLC, d/b/a Post Brothers Presidential City and Rittenhouse Hill Apartments, herein called the Respondent, stating in part that the Respondent was destroying the Union's area standards wages and benefits, and asked passerbys not to rent from the Respondent. The Complaint further alleges that on about April 30 and May 8, Respondent, by its maintenance employees, removed these signs that the Union had placed on public property adjacent to these residential buildings. It is alleged that by removing these signs, the Respondent violated Section 8(a)(1) of the Act.

I. Jurisdiction and Labor Organization Status

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

The Facts

At the commencement of the hearing, the parties entered into the following stipulation of facts regarding the alleged unfair labor practice allegations, as well as stipulating that the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act:

[1] Unless indicated otherwise, all dates referred to herein relate to the year 2013.

(a) Starting in late April, the Union placed lawn signs on public property adjacent to Presidential City and openly visible to the public and employees which contained the following language: "PRESIDENTIAL CITY APARTMENTS," "POST BROS. HELP DESTROY AREA WAGES & BENEFITS," and "DO NOT RENT HERE,"

(b) Starting in late April, the Union placed lawn signs on public property adjacent to Rittenhouse and openly visible to the public and employees which contained the following language: "RITTENHOUSE HILL APARTMENTS," "POST BROS. HELP DESTROY AREA WAGES & BENEFITS," "DO NOT RENT HERE," or "MANAGEMENT MAY INCREASE," "YOUR MONTHLY RENT," "and "WITH ONLY 60 DAYS NOTICE."

6. On or about April 30, Respondent, by its maintenance or other employees, removed the lawn signs that the Union had placed on public property adjacent to Presidential City.

7. On or about May 8, Respondent, by its maintenance or other employees, removed the signs that the Union had placed on public property adjacent to Rittenhouse.

Analysis

The parties stipulated to the above facts and agreed that these facts would constitute the entire record. Counsel for the Respondent's brief argues that the Union's signs constituted secondary boycott activity under Section 8(b)(4) of the Act and, therefore, is not protected under Section 7 of the Act. As stated in its brief, there are two bases for this defense:

> As the owner and general contractor, Respondent does not establish the wages paid by the subcontractors it hires. Rather, the subcontractors themselves set such wages. Local 98's dispute over the wages and benefits paid for electrical work performed at Respondent's properties is therefore clearly a dispute with the subcontractor hired to perform such electrical work. Thus, Respondent is clearly a "secondary" employer in this matter, while the "primary" employer is the subcontractor performing the electrical work.

The other basis of Respondent's defense, also from its brief:

> The real labor dispute arose out of the non-union electrical subcontractor performing work at Respondent's Goldtex property, located nearly 10 miles away from Presidential City and Rittenhouse Hill. As such, Local 98's signage at Presidential City and Rittenhouse Hill was an attempt to force Respondent to stop utilizing the services of the non-union electrical contractor at Goldtex or future worksites. Based on all of the foregoing…Local 98's signage constituted unlawful secondary boycott activity, and accordingly, Respondent did not violate the Act by removing such signage.

Although these might be valid defenses to establish that the Union was not engage in protected conduct within the meaning of Section 7 of the Act when it placed the signs on public property, there is no record testimony to support these defenses. The law is clear that "…a stipulation is conclusive on the party making it and prohibits any further dispute of the stipulated fact by that party or use of any evidence to disprove or contradict it." *The Kroger Co.,* 211 NLRB 363, 364 (1974); *Extendicare Health Services, Inc.*, 347 NLRB 544, 545 (2006). As the record herein is devoid of any evidence supporting these defenses that the Union's dispute was with its electrical subcontractor these locations and at the Goldtex location, and that it is the secondary employer, these defenses will not be considered.

The initial issue is whether the Union's actions are protected by Section 7 of the Act. In

Victory Markets, Inc., 322 NLRB 17, 18 (1996), the Board stated:

> As a general rule, nonemployee area standards/customer boycott handbilling like here is protected by Section 7 of the Act…Thus, if the message on the union's handbill indicates that an employer is undermining the collectively bargained wage and benefit standards in the area, and if the union's conduct in conveying the message is peaceful and consistent with the nature of the message, i.e., the union's activity is ostensibly in support of area wage and benefit standards, the Board will find, prima facie, the union's activity protected by Section 7 of the Act. At that point, it is the respondent employer's burden to establish, if it can, that the union's activity is not what it appears to be and that it is outside the sphere of Section 7 protection.

As there is no record evidence that the Union's activity was anything other than an appeal to the public to support their area wages and benefit standards[2], I find that it is protected by Section 7 of the Act.

The final issue is whether the Respondent had a lawful right to remove the Union's signs. In *Wild Oats Markets, Inc.*336 NLRB 179, 180 (2001), the Board stated:

> It is well established that an employer may properly prohibit solicitation/distribution by nonemployee union representatives on its property if reasonable efforts by the union through other available channels of communication will enable it to convey its message, and if the employer's prohibition does not discriminate against the union by permitting others to solicit/distribute. [citing *Lechmere, Inc.*, 502 U.S. 527 (1992).] This precedent, however, presupposes that the employer at issue possesses a property interest entitling it to exclude other individuals from that property.

In *Bristol Farms, Inc.*, 311 NLRB 437 (1993), the Board stated: "It is beyond question that an employer's exclusion of union representatives from public property violates Section 8(a)(1), so long as the union representatives are engaged in activity protected by Section 7 of the Act." See also *Best Yet Market*, 339 NLRB 860 (2003); *CSX Hotels, Inc.*, 340 NLRB 819 (2003). And, finally, the law is clear that an employer who removes signs that a union has placed on public property in support of a strike or its area standards, impermissibly interferes with the Section 7 rights of its employees, and has therefore violated Section 8(a)(1) of the Act. *Muncy Corp.,* 211 NLRB 263, 272 (1974); *Slapco, Inc.,* 315 NLRB 717, 720 (1994). I therefore find that by removing the Union's signs placed on public property, the Respondent violated Section 8(a)(1) of the Act.

Conclusions of Law

1. Respondent is, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

3. By removing the lawn signs that the Union had placed on public property on about April 30 and May 8, 2013, the Respondent violated Section 8(a)(1) of the Act.

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[2] With the exception of the signs at Rittenhouse stating: "Management may increase your monthly rent with only 60 days notice," which does not relate to area standards protection.

The Remedy

Having found that Respondent violated Section 8(a)(1) of the Act, I recommend that it be ordered to cease and desist therefrom, and take certain affirmative action that will effectuate the policies of the Act.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Post Commercial Real Estate, LLC, d/b/a Post Brothers Presidential City, and Rittenhouse Hill Apartments, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Interfering with informational lawn signs that were posted on public property by International Brotherhood of Electrical Workers, Local Union # 98 ("the Union") by removing said signs.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Within 14 days after service by the Region, post at Post Brothers Presidential City, Rittenhouse Hill Apartments, and each of its offices in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition, Respondent shall mail a copy of the Notice to the Union for posting, if it wishes to do so. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 30, 2013.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the

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[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 17, 2014

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Joel P. Biblowitz
Administrative Law Judge

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APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT remove, or cause to be removed, signs that International Brotherhood of Electrical Workers, Local Union #98 ("the Union") or any other labor organization placed on public property, which signs referred to the Union's wage and benefit area standards.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce you in the rights guaranteed you by Section 7 of the Act.

POST COMMERCIAL REAL ESTATE, LLC, d/d/a POST BROTHERS PRESIDENTIAL CITY AND RITTENHOUSE HILL APARTMENTS
(Employer)

Dated_____ By_____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

615 Chestnut Street, One Independence Mall, 7th Floor

Philadelphia, Pennsylvania 19106-4404

Hours: 8:30 a.m. to 5 p.m.

215-597-7601.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 215-597-7643.